

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA, and )  
THE OSAGE MINERALS COUNCIL, )

Plaintiffs, )

vs. )

Case No. 14-CV-704-GKF-JFJ

OSAGE WIND, LLC; )  
ENEL KANSAS, LLC; and )  
ENEL GREEN POWER NORTH )  
AMERICA, INC., )

Defendants. )

**DEFENDANTS' RESPONSE TO PLAINTIFF THE UNITED  
STATES' MOTION FOR SUMMARY JUDGMENT [Dkt. # 300]**

# **EXHIBIT 3**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

and

OSAGE MINERALS COUNCIL,

Intervenor-Plaintiff,

vs. No. 14-CV-704-GFK-JFG

OSAGE WIND, LLC; ENEL, KANSAS,  
LLC; and ENEL GREEN POWER  
NORTH AMERICA, INC.,

Defendants.

12 VIDEO ZOOM DEPOSITION OF CRAIG MAZUROWSKI  
TAKEN ON BEHALF OF THE PLAINTIFF  
ON JUNE 7, 2021 AT 10:03 AM  
13 REPORTER PRESENT IN OKLAHOMA CITY, OKLAHOMA  
APPEARANCES

14 On behalf of the PLAINTIFF:  
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23 (Appearances continued on the following page.)

24 VIDEOTAPED BY: Kaleb Pinalto

25 REPORTED BY: Jody Graham, CSR, RPR, RMR, CRR

1 A Excess, no.

2 Q The last sentence there says, "Contractor  
3 shall not haul material outside of project boundaries  
4 nor use native material for any construction purposes  
5 other than noted above."

6 I read that correctly; right?

7 A Yes.

8 Q Okay. Was any of the material that was  
9 excavated used for construction purposes other than  
10 the construction purpose of backfill or foundational  
11 support?

12 A No.

13 Q Do you know if it was -- scratch that.

14 As part of the collector system that was  
15 installed during the Osage Wind project, an  
16 underground cable system was installed; is that  
17 correct?

18 A Correct.

19 Q For these undergrounds cables, trenches were  
20 made; is that correct?

21 A Correct.

22 Q Was blasting used for any of the trenches?

23 A I don't remember.

24 Q Okay. When the trenches are being  
25 excavated, what was done with the excavated materials?

1 conventional track excavators?

2 A I assume the geotech report.

3 Q Okay. When it says "conventional track  
4 excavators," do you know what it's referring to?

5 A Yes.

6 Q What's it referring to?

7 A A regular excavator.

8 Q With respect to the remaining 27 turbines,  
9 what does "additional special handling of excavator  
10 rock" refer to?

11 A I would assume blasting and crushing.

12 Q Okay. Would all rocks that are blasted also  
13 need to be crushed?

14 A Yes.

15 Q Why is that?

16 A So we can re-use it.

17 Q Okay. When you blast the material, is it --  
18 I guess it doesn't blow it to smithereens. It leaves  
19 large chunks of rocks; is that correct?

20 A Correct.

21 Q And that's why you need to crush it down to  
22 a smaller size?

23 A Correct.

24 Q Okay. When you excavate using conventional  
25 track excavators, you don't -- do you need to do

1 Q Is that -- in your experience in the  
2 industry, have you ever had that happen?

3 A Yes.

4 Q Okay. Was any of the excavated materials  
5 not otherwise used and left in stockpiles on the  
6 property?

7 A I don't recall.

8 Q Okay. Was any -- scratch that.  
9 Was any of the excavated materials used for  
10 landscaping purposes?

11 A I don't recall.

12 Q Was any of the excavated materials used for  
13 road construction purposes?

14 A No.

15 Q Was any of the excavated material  
16 distributed around the wind tower foundations and  
17 graded to establish positive drainage away from the  
18 foundation?

19 A No.

20 Q Okay. And let me kind of backtrack. It's  
21 my understanding that after the excavated material is  
22 used as backfill, it's redacted, they put up the wind  
23 tower. And then at that point people can use excess  
24 material, spread it around the base and grade it in a  
25 way that allows for additional drainage away from the

1 foundation. Do you recall that happening here?

2 A I don't recall.

3 Q Were wooden poles installed for transmission  
4 lines on site?

5 A I don't remember. Oh, wow. I think it's  
6 safe to assume, yes.

7 Q Okay. Would you have, as project manager,  
8 overseen the installation of any wooden poles --

9 A Yes.

10 Q -- if they were installed? Okay. Are you  
11 generally aware of the process of how wooden poles are  
12 installed on site for transmission lines in general?

13 A Yes.

14 Q Okay. Is it your understanding that holes  
15 are made in the ground where the wood poles are to go  
16 in; correct?

17 A Yes.

18 Q And are you aware that after the wooden pole  
19 is placed in the excavated hole, that crushed rock is  
20 to be used as backfill for structural support?

21 A Yes.

22 Q Okay. Do you know if crushed rock would  
23 have come off-site to be used for structural support  
24 for the wooden pole transmission lines for the Osage  
25 Wind project?

1 A I don't recall.

2 Q Okay. You would have expected -- would you  
3 have expected that excavated material would have been  
4 used for structural support for the wooden poles?

5 A I don't recall.

6 Q You had no expectations?

7 A The expectation is they would have likely  
8 used the quarry.

9 Q Used the quarry?

10 A Correct.

11 Q What do you mean by that?

12 A There was two quarries close to the project  
13 where material was purchased.

14 Q I believe earlier you testified that you  
15 were aware that in relations to excavation areas, that  
16 only sand was brought in off property to be used as  
17 backfill; is that correct?

18 A Yeah. The expectation was.

19 Q Okay. So your expectation would be that for  
20 these wooden poles, you would have expected that the  
21 backfill to be used would have been -- would have came  
22 from one of the two quarries?

23 A I'm going to stick with I don't recall. You  
24 would have to check with --

25 Q Okay. Who would I need to speak with that

1     privy to any conversations regarding any theory set  
2     forth by the Osage Nation regarding any issues?

3             A     Not that I can --

4                     (Speaking simultaneously.)

5             Q     Sorry. None that you can what?

6             A     None that I can recall.

7             Q     Okay. After material is excavated --  
8     scratch that.

9                     It's your understanding, sir, that all of  
10    the excavated material that was used as backfill was  
11    used for the purpose of structural support for the  
12    wind towers; is that correct?

13            A     Correct.

14                     MS. STEVENSON: Object to form.

15            Q     (BY MR. ASHWORTH) I'm going to introduce  
16    an exhibit that I'm going to mark as Exhibit  
17    Number 50, which is going to be a purchase order to  
18    APAC. Have you seen this document before, Craig?

19            A     Seems familiar.

20            Q     Okay. It appears to me to be a materials  
21    purchase order to APAC - Central, Inc., billed to IEA.  
22    And it's for one-and-one-half-inch aggregate, and it's  
23    dated September 16th, 2014. Do you know what this  
24    would have been for -- the aggregate was to be used  
25    for?



1 A Specifically, no.

2 Q Okay.

3 A I think it would be safe to assume it would  
4 be for roads and crane pads.

5 Q How -- when would the roads and crane pads  
6 have been constructed in relations to when excavation  
7 would have taken place?

8 A I would have to refer to the schedule.

9 Q If -- would those have been -- would the  
10 roads and crane pads have been one of the first  
11 projects, first items to have been completed for a  
12 particular project?

13 A That's not always the case.

14 Q Okay. Do you know about -- for the Osage  
15 Wind project, do you know if the roads and crane pads  
16 were done first before construction -- I'm sorry --  
17 before the excavation work?

18 A You can't do --

19 (Speaking simultaneously.)

20 MR. RODABAUGH: Object to the form.

21 Q (BY MR. ASHWORTH) I'm sorry. Can you  
22 repeat that?

23 A You can't do a crane pad before your  
24 excavation.

25 Q Right. What about the roads?

1 A I don't remember.

2 Q Do you know why one-and-one-half inch  
3 aggregate, that particular size was used or was  
4 ordered?

5 A You would have to refer to the drawings.

6 Q Okay. Based on your testimony today, you  
7 don't know why that particular size was ordered; is  
8 that correct?

9 A Correct.

10 Q Okay. Who is APAC - Central, Inc.? Do you  
11 know who they are?

12 A They own a quarry down the road.

13 Q Do you know why APAC - Central was chosen  
14 for the aggregate purchase?

15 A I don't remember.

16 Q Do you know if there was any quarry or  
17 aggregate seller that was closer than APAC?

18 A Yes.

19 Q And what quarry was that?

20 A I don't remember the name of it. I think --

21 Q Okay.

22 A -- it might have been Burbank Materials or  
23 something like that.

24 Q How much closer would Burbank Materials have  
25 been versus APAC?

1 A A few miles.

2 Q Okay. And do you know why -- I'm sorry.

3 A Sorry.

4 Q And it's your testimony that you don't know  
5 why Burbank was chosen for this purchase even though  
6 it was closer to the project?

7 A I don't remember.

8 Q I'm going to pull up another purchase  
9 orders. And it's from Burbank Materials. And I'm  
10 going to mark it as Exhibit 51. This one is dated in  
11 the right-hand corner as November 19th, 2013. It's to  
12 Burbank Materials from RMT, Inc.

13 And it appears to be for -- I would assume  
14 that's "AG base." Do you know if that's aggregate  
15 base?

16 A I don't remember. That's probably safe to  
17 assume.

18 Q Okay. Under that's "blue shale." And then  
19 we have "crusher run, red clay, sandy loam, select  
20 fill and surge rock." Do you know what these  
21 materials were ordered for in 2013?

22 A No. Because this is the year before; right?

23 Q Yes. This is 2013 with an expected date  
24 of -- seems to be expected date is the same as  
25 November 19, 2013.

1 THE WITNESS: I would assume so.

2 Q (BY MS. NAGLE) Was that your  
3 understanding at the time?

4 A I don't remember.

5 Q Do you recall any other communications that  
6 you or anyone else at IEA may have sent to Enel or EGP  
7 NA to communicate this increase in costs related to  
8 having to import materials off-site?

9 A I don't recall.

10 Q Okay. All right. Do you recall how this  
11 issue resolved itself? Ultimately did IEA resort to  
12 obtaining the rest of the materials off-site?

13 A I don't believe so. I believe we balanced  
14 it at the turbine location and then, you know, we used  
15 the quarries for roads and crane pads.

16 Q Uh-huh. Do you know who at Enel or EGP NA  
17 made the determination that you would continue using  
18 the on-site materials?

19 MS. STEVENSON: Object to form.

20 THE WITNESS: I don't recall.

21 Q (BY MS. NAGLE) Let's -- I'm going to  
22 actually pull up another document really quick that  
23 we will look at. So -- I think you have a fierce  
24 defender there with you.

25 A She just walked in the door so...